

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

<b>Applicant(s):</b> White Jr.	<b>Conf. No.:</b> 4391
<b>Serial No.:</b> 10/688,006	<b>Art. Unit:</b> 3625
<b>Filed:</b> 10/17/2003	<b>Examiner:</b> Levine, Adam L.
<b>Title:</b> METHOD, SYSTEM, AND PROGRAM PRODUCT FOR MANAGING ITEMS AVAILABLE FOR ELECTRONIC PURCHASE	<b>Docket. No.:</b> END920030046US1 (IBME-0087)

Mail Stop Reply Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REPLY BRIEF**

Sir:

Introductory Comments:

This paper is being filed in response to the Examiner's Answer dated 07 June 2011. Appellant responds as follows:

Remarks:

Appellant respectfully submits that the Examiner has misstated facts relevant to the rejections, and in so doing, confuses the issues to be considered on Appeal. Accordingly, Appellant responds.

Regarding the rejection of claims 8 and 10-13 under 35 USC 112, second paragraph, Appellant disagrees with the Examiner's continued assertions. In the Examiner's Answer, the Examiner maintains the assertion that it is unclear where and by what entity the selection is made in claim 8. (Examiner's Answer, Page 5). The Examiner alleges that the portion of the claim, "receiving a selection, on the at least one computer device, of at least one item by the administrator for display," is indefinite. However, Appellant asserts that as should be clear from the grammatical context, the claim is not indefinite. For instance, receiving a selection on a computer device is clearly a selection which is received on, or by, the computer device. The selection itself continues to be defined after the comma, of at least one item by the administrator. If one removes the interjecting comma describing where the selection is received, the claim states that the received selection is of at least one item by the administrator and is for display. As should be understood, an administrator makes a selection of at least one item for display, a computer device receives the selection. Further, a thorough reading of the claim should remove any confusion, as the preceding step includes presenting the plurality of high frequency items to an administrator. In the full context of the claim, if the administrator is presented with the items, and a selection is made, the intention is that the administrator would make the selection. Accordingly, in the full scope of the claim, the selection as being made by an administrator cannot be so confused. The Examiner's

assertion that this interpretation is stilted and strained is simply incorrect, and the alternative two interpretations introduced by the Examiner are not consistent with either the grammar or the context of the claim.

Regarding the Examiner's response to the rejection of claims 1-2, 5-8, and 10-22 under 35 USC 102(b) (Examiner's Answer, Page 12), Appellant reasserts the arguments from the Appeal Brief. In addition, the Examiner states that the Appellant's 'historical data' is unclear and that the arguments focus on small portions of cited subject matter. (Examiner's Answer, Page 13). However, Appellant submits that while this is not true, the Examiner's further assertion that independently drafted disclosures use differently styled language, terms, etc. is true, however Spiegel still does not disclose each and every feature of the claim. For instance, as Appellant has previously argued, a vague disclosure of elevation based on current popularity is what is disclosed in Speigel. Appellant, however, has claimed "storing, on the at least one computer device, historical data corresponding to operations performed by each of a plurality of users in order to locate an item in the hierarchical structure, wherein the operations include each level and corresponding category of the hierarchical structure which were navigated by the plurality of users in order to locate the item." Speigel does not store for each of a plurality of users, operations including each level and corresponding category of the hierarchical structure which were navigated by the plurality of users to locate an item. This is not simply a difference in language and terms used by separate disclosures but an entire level of detail missing from the disclosure of Speigel. The broadest reasonable interpretation of Spiegel fails to include storing each level and each category navigated by a plurality of users, but rather includes vague definitions of popularity determinations,

regardless of differences in terms used by different disclosures. Accordingly, as clarified based on the Examiner's remarks, Appellant asserts that all of the features of the claim are not disclosed within Spiegel for claim 1, and similarly the other independent claims.

Regarding the Examiner's response to the rejection of claim 2, Appellant submits that Spiegel's "system's (and therefore the system administrator's) capacity" to tune a system is not equivalent to Appellant's claimed system administrator as asserted by the Examiner. (Examiner's Answer, Page 14). Rather, as specified in the Appeal Brief, the Abstract of Spiegel specifies that the elevation of nodes is automatic. Therefore, the only direct reference to the Administrator in Spiegel is the only portion that can be interpreted to mean an actual administrator doing the steps. If the term administrator is not used, one cannot simply assume that the system is equivalent to an administrator, as the elevating of nodes is defined as automatic. Further, as previously argued, the portion of Spiegel specifying an administrator simply includes weighting certain actions taken, such as click-throughs, searches, purchases, etc. The administrator can tune these ratings, however elevation is automatic. Clearly, this is not the same as presenting the administrator with a list of items as identified in the context of Appellant's claim, as the administrator of Spiegel does not see the items, but rates the type of actions taken. Accordingly, Appellant maintains that Spiegel fails to disclose each and every feature of claim 2.

Regarding the Examiner's response to the rejection of claim 8, Appellant disagrees with the interpretation given. For instance, the Examiner again asserts that it is unclear who is making the selection. In response, Appellant continues to assert that the plurality of high frequency items are presented to the administrator, and then the selection

by the administrator is received at the computer device. When an administrator is presented with the items, the context is perfectly clear. Further, the administrator is not arbitrarily rearranging items or selecting at a whim. Each of the features of the claims are still relevant, and the storing step is followed. However, in the case that a plurality of items is identified, the administrator may select one or more from the plurality. This is not optional or indefinite, but rather a clearly claimed step. If the selection is for an item which is not a high frequency item, those steps are still followed and presented to the administrator as claimed. Appellant asserts that the Examiner is incorrect to state that the claim is not narrowed due to being optional or conditional. It is unclear how the Examiner can omit portions of the claim and only require an administrator's command. (Examiner's Answer, Page 16). All steps, including the storing and identifying, are unique feature of the claim, with a plurality of items presented to an administrator. Appellant asserts that the limitation is not intended to be optional, but rather is an included feature of the claim, in that an administrator is capable of selecting an item not on the list. As argued above, Spiegel fails to teach presenting an administrator with the list of items, much less allowing a selection of an item that is not high frequency, so the Examiner's point is moot. Further, Spiegel fails to disclose each and every feature of the claim as addressed regarding claim 1 above.

Regarding the rest of the Examiner's Answer, it relies on the features discussed above. Accordingly, Appellant relies on the arguments above as well as those presented in the Appeal Brief.

Appellant respectfully submits that the Spiegel reference does not disclose all of the claim limitations of the independent claims. Regarding the dependent claims,

Appellant hereby incorporates the above arguments with respect to the independent claims. Accordingly, Appellant maintains that the dependent claims are patentable based on the arguments above as well as their own features.

Accordingly, Appellant submits that all pending claims are allowable because Spiegel fails to disclose each and every feature of the claims as required by 35 U.S.C. 102(b).

Respectfully submitted,

/Nathan B. Davis/

Date: 08 August 2011

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Nathan B. Davis  
Reg. No. 67,474

Hoffman Warnick LLC  
75 State Street, 14<sup>th</sup> Floor  
Albany, New York 12207  
Phone: (518) 449-0044  
Fax: (518) 449-0047